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March 10, 2021

Via Email Only

The Honorable Donovan W. Frank
Senior U.S. District Judge, District of Minnesota
United States District Court
724 Warren E. Burger Federal Building
and U.S. Courthouse
316 North Robert Street, Suite 724
St. Paul, MN 55101

**Re: *Karsjens, et al. v. Harpstead, et al.*
Court File No. 0:11-cv-03659 (DWF/TNL)**

Dear Judge Frank:

I write in advance of the March 12, 2021 status conference in this matter, and pursuant to the Court's email of March 4, 2021 asking each party to submit a letter "indicating its position on the status of the case and proposed next steps," and stating "whether there should be settlement discussions with or without the assistance of the Court, including the Magistrate Judge." In light of the Court's request that this letter and Plaintiffs' corresponding letter be emailed to chambers, Defendants respectfully request permission to also file both letters via CM/ECF. In addition, Defendants respectfully request that the March 12 status conference be on the record.

Regarding the status of the case and proposed next steps, the parties conferred about these issues by phone on March 3, 2021. During that call, Plaintiffs stated they want to amend the Third Amended Complaint ("TAC") to conform to the trial evidence under Fed. R. Civ. P. 15(b)(2). Defendants stated they could not take a position on that request without reviewing Plaintiffs' proposed amendments, and Plaintiffs agreed they would draft the proposed amendments and send them to Defendants. Plaintiffs also generally indicated interest in some additional discovery, and Defendants similarly responded that they could not take a position on that request prior to resolving what document is the operative complaint and what claims remain at issue.

In the apparent absence of any compelling reason to act otherwise, Defendants' position had been that the parties should simply re-brief Counts V, VI, and VII of the TAC in light of the standards the Eight Circuit directed be applied on remand, *see Karsjens v. Lourey*, -- F.3d --, 2021 WL 709565, at *3-4 (8th Cir. Feb. 24, 2021), consistent with what the parties did following the previous remand. *See* Docs. 1097, 1100, 1102. Defendants may ultimately continue to take that position; given Plaintiffs' interest in seeking amendment, however, Defendants propose that the Court set forth a deadline for Plaintiffs to provide an underline-and-strikethrough version of their

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proposed amendments to Defendants, and set forth a briefing schedule on Plaintiffs' motion to amend for use in the event the parties disagree after a meet-and-confer. Defendants believe the parties and the Court will be in a better position to discuss further steps after the amendment issue is resolved.

Regarding whether there should be settlement discussions, Defendants are not categorically opposed to that possibility. Similar to the above, however, Defendants cannot take a firm position on whether settlement discussions should occur, or in what form, prior to resolving what document is the operative complaint and what claims remain at issue.

Sincerely,

s/ Aaron Winter

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